



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

FEB 17 2005

Joseph J. Hasler, Esq.
LaRowe, Gerlach & Roy S.C.
110 E. Main Street
Post Office Box 231
Reedsburg, Wisconsin 53959-0231

RE: MUR 5426
Dale Schultz
Dale Schultz for Congress and
Joseph J. Hasler, in his official
capacity as treasurer,
Friends and Neighbors of Dale
Schultz and Dennis Hamilton,
in his official capacity as treasurer

Dear Mr. Hasler:

On September 1, 2004 and November 29, 2004, respectively, the Federal Election Commission notified your clients Dale Schultz, Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer, Dale Schultz for Congress and you, in your official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you and your clients.

Upon further review of the allegations contained in the complaint, and information provided by you and your clients, the Commission, on February 15, 2005, found that there is reason to believe that your clients Dale Schultz, Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer, Dale Schultz for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Additionally, because it was not able to locate specific disbursements in Dale Schultz for Congress's disclosure reports showing it had made reimbursements directly or indirectly to Friends and Neighbors of Dale Schultz, the Commission requests that you submit for its review the following information:

- (1) All documentation (properly authenticated by affidavit) demonstrating that Schultz for Congress reimbursed Ben Lewis and Dale Schultz for the expenses erroneously paid by Friends and Neighbors of Dale Schultz and that they, in turn, reimbursed

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Friends and Neighbors of Dale Schultz. Such information should include, but not be limited to, photocopies of canceled checks, communications referring to such reimbursements, and an explanatory narrative highlighting the dates and individuals involved in the reimbursement of the funds at issue; and

- (2) All documentation (properly authenticated by affidavit) reflecting the disclosure of such reimbursements in the campaign finance reports of both Friends and Neighbors of Dale Schultz and Dale Schultz for Congress. For each document provided, list and identify the disbursements that reflect the reimbursements at issue.

Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

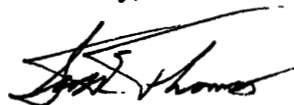
In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe, contingent upon your production of the above materials. Enclosed is a conciliation agreement that the Commission has approved in this matter.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please provide the above information and sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Dale Schultz MUR 5426
5 Dale Schultz for Congress and
6 Joseph J. Hasler,
7 in his official capacity as treasurer
8 Friends and Neighbors of Dale Schultz and
9 Dennis Hamilton,
10 in his official capacity as treasurer
11

12 **I. INTRODUCTION**

13
14 The complaint in this matter alleges that Wisconsin state senator Dale Schultz (“the
15 candidate”), a candidate for Congress in 2004, and his principal campaign committee, Dale Schultz
16 for Congress and Joseph J. Hasler, in his official capacity as treasurer (“the federal committee”),
17 improperly used more than \$20,000 in funds and assets from Friends and Neighbors of Dale Schultz
18 and Dennis Hamilton, in his official capacity as treasurer (“the state committee”), to benefit his
19 federal race.¹

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 On September 8, 2003, Dale Schultz, a Wisconsin state senator,² filed a Statement of
22 Candidacy for a seat in Wisconsin’s Third Congressional District.³ In response to complainant’s
23 specific allegations that Schultz’s state committee disclosed eight expenditures in its 2003 Year-End

¹ Dale Schultz, the federal committee and the state committee will collectively be referred to as the “Schultz respondents.”

² Mr. Schultz has been a sitting Wisconsin State Senator since 1991 and was last elected to a full four-year term in 2002.

³ The candidate won the primary on September 14, 2004 but lost the general election held on November 2, 2004.

Dale Schultz

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1 report that allegedly were used to benefit the candidate's federal race, the Schultz respondents⁴
2 concede that the state committee mistakenly paid for six of the eight expenditures. Four of the six
3 expenditures were made to Ben Lewis, a state committee worker who shifted from working on state
4 matters to the federal campaign. These expenditures focused primarily on consulting and mileage
5 costs and were in the amounts of \$1,010.87, \$683.37, \$500, and \$1,142.41, respectively, for a total
6 of \$3,336.65. The federal committee's response attaches a copy of a January 29, 2004 letter from
7 the federal committee treasurer to the state committee treasurer stating that the federal committee
8 would issue a \$3,291.65 check to Mr. Lewis, which he would then endorse to the state committee.⁵

9 Regarding two other expenditures, which were the candidate's own mileage and cell phone
10 expenses, the Schultz respondents acknowledge that "some of the cell phone usage and some of the
11 mileage should properly have been charged to the federal campaign committee."⁶ These
12 expenditures were in the amounts of \$642.89 and \$870.75, respectively, for a total of \$1,513.64. In
13 his affidavit, the candidate states that he received reimbursement from the federal committee for
14 these items and had already reimbursed the state committee. *See Schultz Affidavit at ¶ 23.*

⁴ Each of the Schultz respondents submitted a separate response. The state committee stated that the federal committee's response and Senator Schultz's affidavit stood as its response to the complaint.

⁵ There is a \$45 difference between the cumulative amount of the four Ben Lewis expenditures, which totals \$3,336.65, and the January 29, 2004 \$3,291.65 check that purportedly reimbursed the state committee for these expenditures.

⁶ Although the Schultz respondents considered dividing each phone and mileage expense between federal and state activities to determine the actual amount of federal expenditures, out of an abundance of caution, they decided to treat them as federal committee expenses erroneously paid by the state committee. *See Federal Committee Resp. at 5,6.*

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Factual and Legal AnalysisDale Schultz

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1 The Schultz respondents dispute the other two allegedly improper expenditures raised in the
2 complaint. First, they contend that the state committee properly paid the Republican Party of
3 Wisconsin \$15,620.90 for "Polling Data/Voter List." In his sworn affidavit, the candidate states:

4
5 This item reimburses the State Republican Party for services it provided
6 in July 2003 to prepare research specific to my State Senate district. I was
7 concerned because my percentage of the vote for my 2002 re-election was
8 about 3.5% lower than when I was re-elected in 1998. In connection with
9 my 2002 re-election effort, I had commissioned some polling from a national
10 firm, but was not pleased with the work product or the results. I decided to
11 work with the state party, which needed to charge me market rates for their
12 efforts. I commissioned them to compile demographic statistics and analyze
13 past poll information specific to my State Senate District to help understand
14 why I had lost market share in my most recent re-election. They also provided
15 a targeted voter list for my State Senate District for possible use in state
16 fundraising. The list has not been used in the federal campaign. This work
17 product was delivered to me in July 2003, several months before I decided to
18 run for Congress and filed as a candidate. No new polling was done, and none
19 was targeted to a potential run for Congress.

20
21 *See Schultz Affidavit at ¶ 18.*

22
23 Finally, the Schultz respondents contend that the final expenditure specifically challenged by
24 the complaint, an expenditure by the state committee of \$725 for replacement of computer
25 equipment, involved a printer that was not used in any way by the federal committee or in Mr.
26 Schultz's Congressional campaign.⁷ *See Schultz Affidavit at ¶ 26.*

⁷ The complaint singled out eight expenditures among a list of expenditures disclosed in the state committee's 2003 Year-End report, and appended a page from the state report with the complaint. In the responses, the Schultz respondents discussed each expenditure disclosed on that page, which contained six of the expenditures specifically challenged by the complaint, as well as two other expenditures noted by the complaint that did not appear on the page provided with the complaint. The Schultz respondents, including Dale Schultz in his sworn affidavit, state that while the six Ben Lewis-Dale Schultz expenses at issue were tied to federal election activity, the remaining expenditures were used exclusively for state campaign activity. *See Schultz Affidavit at ¶¶ 12-17, 19, 21, 24, and 25.* The Schultz respondents' explanations of the additional items not singled out by the complaint do not appear to raise any questions about federal activity.

Dale Schultz

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1 The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits a federal
2 candidate, a candidate's agent, and entities established, financed, maintained or controlled by, or
3 acting on behalf of, a candidate from soliciting, receiving, directing, transferring or spending funds
4 in connection with a Federal election unless the funds are subject to the limitations, prohibitions and
5 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A). Moreover, Commission regulations
6 specifically prohibit transfers of funds or assets from a candidate's account for a non-federal
7 election to his or her principal campaign committee for a federal election. 11 C.F.R. § 110.3(d).
8 Both provisions are designed to prevent the use in federal elections of funds raised outside the limits
9 and prohibitions of the Act and to ensure that all funds used in federal elections are reported.

10 Dale Schultz's state committee admittedly used state campaign funds to pay for expenses
11 incurred in connection with Mr. Schultz's federal election race, including expenses incurred by the
12 candidate, and directed by him to the state committee for payment. Wisconsin law limits individual
13 and political action committee contributions to state senate campaigns to \$1,000 per election, *see*
14 Wis. Stats. §§ 11.26(1)(b) and 11.26(2)(b), and the available Schultz state committee reports reveal
15 no corporate or labor organization contributions for the pertinent time period.⁸ Therefore, it is
16 possible that the state funds used in Schultz's federal campaign may have consisted of permissible
17 funds under the Act. Nevertheless, none of the state campaign funds at issue were subject to the
18 Act's reporting provisions as required by Section 441i(e)(1)(A), and in any case, 11 C.F.R.
19 § 110.3(d) flatly prohibits a candidate's state campaign from transferring funds to the candidate's
20 federal campaign. Thus, Mr. Schultz directed his state committee to pay for expenses that he

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Factual and Legal Analysis

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1 incurred in connection with his federal race, and the state committee did so. Additionally, the
2 federal committee effectively received such funds from the state committee. *See* conciliation
3 agreement in MUR 4974 (Tiberi for Congress)(candidate's federal and state committees violated
4 11 C.F.R. § 110.3(d) when his state committee made a contribution to, and incurred expenses on
5 behalf of, his federal committee). Moreover, the state and federal committees also violated the Act
6 and 11 C.F.R. § 110.3(d) with respect to the state committee's payments to Ben Lewis.

7 Therefore, there is reason to believe that Dale Schultz; Friends and Neighbors of Dale
8 Schultz and Dennis Hamilton, in his official capacity as treasurer; and Dale Schultz for Congress
9 and Joseph J. Hasler, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and
10 11 C.F.R. § 110.3(d).

⁸ The federal committee's response to the complaint maintains "all of the funds in State Senator Schultz's state campaign committee came either from individuals or from political action committees who can receive and distribute only individual contributions." *See* Federal Committee Resp. at 7.

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